

No. 82-1305

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ALEXANDER L. STEVENS,
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In the Supreme Court of the United States

OCTOBER TERM, 1982

BLACKSTONE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

**ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

**MEMORANDUM FOR THE NATIONAL LABOR RELATIONS
BOARD IN OPPOSITION**

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On December 30, 1982, the Solicitor General, on behalf of the National Labor Relations Board, filed a petition for a writ of certiorari, *NLRB v. Blackstone Co.*, No. 82-1105. We noted then that the petition in No. 82-1105 presents the same question that will be resolved by the Court in *NLRB v. Transportation Management Corp.*, cert. granted, No. 82-168 (Nov. 15, 1982), and we requested that the Court hold the petition for disposition in light of the Court's decision in *Transportation Management*.

On February 2, 1983, Blackstone Company, the respondent in No. 82-1105, filed a document that it styles a "cross-petition." There is, however, no occasion for a cross petition, since Blackstone does not seek to modify the judgment of the court below in any respect. Rather, the purpose of Blackstone's "cross-petition" apparently is to restate the

question presented by the Board in No. 82-1105 and to present a counter-statement of the case. Blackstone agrees with the Board that the Court should resolve the issue raised by *Transportation Management* and by the decision of the court below (Cross Pet. 13-15). Its "cross-petition" therefore should be treated as a memorandum acquiescing in the Board's petition for a writ of certiorari in No. 82-1105.

Blackstone urges (Cross-Pet. 15-18) that its "cross-petition" should be granted and its case consolidated with *Transportation Management* and that it should be allowed to participate fully in oral argument and briefing. For the reasons stated in our petition in No. 82-1105 we adhere to the view that the *Blackstone* case should be held and disposed of in light of the Court's decision in *Transportation Management*. Any asserted factual differences between the *Blackstone* case and *Transportation Management* can be considered by the court of appeals on remand, if a remand is appropriate after the Court's decision in *Transportation Management*.

It is therefore respectfully submitted that the cross-petition for a writ of certiorari should be denied, and that it should be treated as an acquiescence in the Board's petition for a writ of certiorari in No. 82-1105. The petition in No. 82-1105 should be held and disposed of in light of the Court's decision in *NLRB v. Transportation Management Corp.*, No. 82-168.

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FEBRUARY 1983